

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-7875

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KENNETH ROSHAUN REID,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. Cameron McGowan Currie, District Judge. (0:04-cr-00353-CMC-1)

Submitted: January 17, 2013

Decided: January 23, 2013

Before GREGORY, SHEDD, and KEENAN, Circuit Judges.

Affirmed in part; dismissed in part by unpublished per curiam opinion.

Kenneth Roshaun Reid, Appellant Pro Se. Beth Drake, Jimmie Ewing, Mark C. Moore, William Kenneth Witherspoon, Assistant United States Attorneys, Jeffrey Mikell Johnson, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kenneth Roshaun Reid filed a motion seeking reconsideration of the district court's prior denial of his motion to correct error in the presentence report ("PSR") and challenging the legality of his sentence. The district court denied the motion for reconsideration, determining in its order that Reid had not demonstrated the presence of any error in the PSR warranting correction. The court also treated Reid's challenge to his sentence as a successive 28 U.S.C.A. § 2255 (West Supp. 2012) motion and dismissed the motion for lack of jurisdiction. Reid subsequently filed a self-styled "Rebuttal Motion to Correct Clerical Errors." The district court construed the rebuttal motion as a Fed. R. Civ. P. 59(e) motion to alter or amend judgment and denied the motion. Reid now appeals. We affirm in part and dismiss in part.

With respect to the portion of the district court's order denying Reid's motion for reconsideration, we have reviewed the record and find no reversible error. Accordingly, we affirm that portion of the order for the reasons stated by the district court. United States v. Reid, No. 0:04-cr-00353-CMC-1 (D.S.C. Sept. 26, 2012). We further find no abuse of discretion in the district court's denial of Reid's motion to alter or amend judgment, Robinson v. Wix Filtration Corp., 599 F.3d 403, 407 (4th Cir. 2010) (stating standard of review),

because Reid did not rely on a change in controlling law, present new evidence, or identify a clear error of law. See Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998) (listing the three circumstances under which Rule 59(e) relief may be granted).

With respect to that portion of the district court's order construing Reid's motion for reconsideration as a successive § 2255 motion, that portion of the order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2006). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000); see Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. Slack, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Reid has not made the requisite showing. Accordingly, we deny Reid's motion to suspend rules, deny a certificate of appealability, and dismiss this portion of the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED IN PART;
DISMISSED IN PART